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4  
5 **IN THE SUPREME COURT**  
**STATE OF ARIZONA**

6 PETITION TO AMEND RULES 5.1,) Supreme Court No. R - \_\_\_\_\_  
7 47, 67(B), 69, 74 and 78 )  
ARIZONA RULES OF FAMILY ) Petition to Amend Rules 5.1, 47, 67 (B),  
8 LAW PROCEDURE ) 69, 74 and 78, Arizona Rules of Family  
Law Procedure.

9  
10 Pursuant to Rule 28, Rules of the Supreme Court, the State Bar of Arizona  
11 petitions the Court to amend Rules 5.1, 47, 67(B), 69, 74 and 78 of the Arizona  
12 Rules of Family Law procedure, as reflected in Appendix "A" and "B," as  
13 attached.

14 **I. INTRODUCTION**

15 The original Arizona Rules of Family Law Procedure were proposed by the  
16 Arizona Supreme Court's Family Law Rules Committee and approved by the  
17 Court on October 19, 2005, with an effective date of January 1, 2006. Since then,  
18 two sets of amendments were proposed by the Court's Family Law Rules Review  
19 Committee. The first set was approved as modified with an effective date of  
20 January 1, 2008 (R-06-0022). The second set was approved as modified with an

1 effective date of January 1, 2009 (R-07-0010). The Court's Family Law Rules  
2 Review Committee has since been disbanded and the standing State Bar Family  
3 Law Practice and Procedure Committee currently has primary responsibility for  
4 reviewing the workability of the relatively new rules.

5 Since the Court's Family Law Rules Review Committee has disbanded,  
6 the Family Law Practice and Procedure Committee has met regularly since  
7 September 2006, and has proposed two sets of amendments, including those  
8 proposed in this petition. The first set of amendments was approved by the Court  
9 on September 3, 2009, with an effective date of January 1, 2010 (R-08-0031).

## 10 **II. SUMMARY OF THE PROPOSED AMENDMENTS**

### 11 **Rule 5.1. Simultaneous Dependency and Custody Proceedings**

12 The petition proposes new Rule 5.1 and addresses simultaneous  
13 dependency and custody proceedings. These types of cases involve similar fact  
14 patterns and repetitive evidence. The rule provides for the possibility of  
15 consolidation of dependency and custody proceedings at the discretion of the  
16 juvenile division. Consolidation of these cases is left to the discretion of the  
17 juvenile division. Prior to the submission of this rule, no guidance existed for the  
18 situation of simultaneous custody and dependency actions. This rule provides  
19 guidance and allows the court to more expeditiously handle these types of cases.  
20

1 **Rule 47. Temporary Orders**

2       The petition proposes to add A.R.S. § 25-415 as a reference in subdivision  
3 A, including non-parent custody cases in the list of actions susceptible to  
4 temporary orders.

5 **Rule 67. Mediation, Arbitration, Settlement Conferences, and Other Dispute**  
6 **Resolution Processes Outside of Conciliation Services.**

7       The petition proposes to add to subdivision (B)(1), language referencing  
8 binding settlements as delineated in Rule 69 and reiterates that the parties shall: a)  
9 acknowledge that the settlement was voluntary and without undue influence after  
10 full disclosure of all relevant facts and information and, b) that the agreement is  
11 intended to be binding and is fair and equitable. Where children are the subject of  
12 an agreement the revision requires the parties to confirm that the agreement is in  
13 the best interests of the minor children.

14       Another proposed addition to the rule sets forth the requirements for  
15 appointment of active judges pro tempore to serve as private mediators. The  
16 addition requires the judge pro tempore to submit an affidavit stating that the judge  
17 pro tempore is in good standing. The rules further provides that the order  
18 appointing the judge pro tempore authorizes the approval of binding agreements,  
19 and authorizes the judge pro tempore to sign any decree conforming to the  
20 agreements of the parties. Pursuant to this addition, judges pro tempore may be

1 paid for their mediation services, but must not seek remuneration for the approval  
2 of agreements or the execution of decrees.

3 **Rule 69. Binding Agreements; Presumption of Validity**

4 The petition proposes to add that the terms of a settlement agreement may be  
5 set forth in an audio recording as well as on the record before a judge,  
6 commissioner, judge pro tempore, court reporter, or other person authorized by  
7 local rule or administrative order.

8 The proposal also sets forth a new paragraph B establishing that the burden  
9 of proof in challenging an otherwise valid and binding agreement lies with the  
10 party challenging that agreement. Upon such a challenge, attorney fees may be  
11 awarded to the party defending the challenge.

12 These changes are adapted to conform with the Arizona Constitution, Article  
13 6, § 30, A.R.S. §12-221 to 12-225, A.R.S. §38-424 and Rule 80(d) ARCP.

14 **Rule 74. Parenting Coordinator**

15 The petition proposes to add language to Rule 74(A) precluding counsel  
16 from attending parenting coordinator meetings unless agreed to by the parties and  
17 the parenting coordinator or ordered by the court.

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1 **Rule 78. Judgments; Costs; Attorneys' Fees**

2 The petitioner proposes to add to Rule 78, paragraph E, Offers of Judgment  
3 not Applicable, which specifically states that offers of judgment pursuant to Rule  
4 68 ARCP shall not apply to any legal matter subject to the ARFLP.

5 A.R.S. § 25-324 leaves decisions regarding the assessment of costs and fees  
6 to the discretion of the court. This statute makes offers of judgment inappropriate  
7 in family law cases. Offers of judgment also potentially conflict with A.R.S. § 25-  
8 317, allowing nullification of settlements that the court deems unfair.

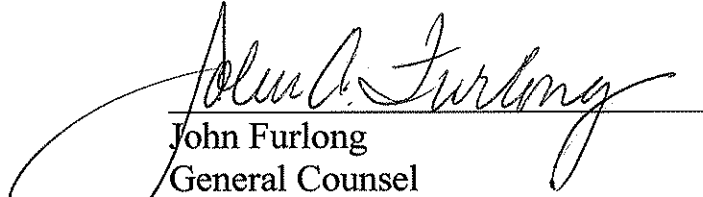
9 The petition further proposes to add a comment to rule 78(C). The comment  
10 is intended to codify the decision in *Van Emmerick v. Colosi*, 193 Ariz. 398, 972  
11 P.2d 1034 (App. 1998), which distinguished the decision in *Allen v. Allen*, 129  
12 Ariz. 112, 628 P.2d 995. In *Van Emmerick*, the court held that "a dissolution  
13 action necessarily abates with the death of a spouse." *Id.* at 399, 1035.

14 **III. CONCLUSION**

15 Petitioner respectfully requests that the Court consider this petition and the  
16 proposed rule amendments. Petitioner additionally requests that this petition be  
17 circulated for public comment in due course and that the Court adopt the  
18 proposed rules as they currently appear or as modified in light of comments  
19 received from the public, with an effective date of January 1, 2011.  
20

1 Respectfully submitted this 18<sup>th</sup> day of December, 2009.

2 State Bar of Arizona

3   
4 John Furlong  
5 General Counsel

6 Electronic copy filed with the  
7 Clerk of the Supreme Court of Arizona  
8 this 18<sup>th</sup> day of December, 2009.

9 by: Kathleen Lundgren  
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## **APPENDIX “A”**

## **Arizona Rules of Family Law Procedure**

### **Add New Rule 5.1. Simultaneous Dependency and Custody Proceedings**

(A) When a pending family law proceeding and a pending dependency proceeding concern the same parties, any party may file a motion to consolidate the proceedings. The court may on its own motion consolidate the proceedings. The motion shall be filed in the juvenile division and a copy shall be provided to the assigned family law division. The assigned juvenile division shall rule on the motion to consolidate. Custody and parenting time issues will be litigated in the juvenile division unless the juvenile division defers jurisdiction to the assigned family law division.

(B) If the assigned juvenile division determines that a change of custody may result in a dismissal of an adjudicated dependency case, the assigned juvenile division may refer the dependency matter to the assigned family law division for change of custody proceedings or retain the cases in the juvenile division.

(C) If the juvenile division denies a motion to consolidate and defers jurisdiction of an adjudicated dependency matter to the assigned family law division in a change of custody proceeding, a hearing may be set pursuant to A.R.S. § 25-411(E). The referral to the assigned family law division shall include an order that the assigned family law division has jurisdiction to resolve the custody matter. If the change of custody is granted, the assigned family law division may enter an order dismissing the dependency.

(D) If the juvenile division finds that the matter is more appropriate for the family law division, the juvenile division may transfer the matter to the family law division.

(E) During any dependency/guardianship proceeding in the juvenile division, the assigned juvenile division may suspend, modify, or terminate a child support order for current support if the parent entitled to receive the child support no longer has legal or physical custody of the child, and, except in Title IV-D cases may make appropriate orders regarding any past due support or child support arrears. The assigned juvenile division may direct that the wage assignment be quashed or modified.



## **Rule 47. Temporary Orders**

**A. Motions for Pre-Decree or Pre-Judgment Temporary Orders.** A party seeking temporary orders under A.R.S. §§ 25-315, 25-324, 25-404, 25-408, 25-415, 25-817 or 25-905 shall do so by filing a separate verified motion with the court setting forth the legal and jurisdictional basis for the motion and the specific relief requested. The motion shall be filed after or concurrently with the initial petition, shall incorporate the relevant allegations of a filed petition by reference and not separately repeat them, and shall include the following information and documents, where relevant:

1. *Custody and Parenting Time.* If a party seeks a temporary custody, parenting time, or visitation order, the motion shall set forth a proposed parenting plan specifically stating the custody, parenting time, and visitation requested for all parties to the action.

2. *Child Support.* If a party seeks a temporary child support order, the party shall include and file with the motion a completed a Child Support Worksheet setting forth the amount requested in accordance with the current *Arizona Child Support Guidelines*. The movant shall also provide copies of all child support disclosure documents required by Rule 49(B) to the opposing party within the time period specified in paragraph E, and shall provide an additional copy of these documents to the court at the time of any evidentiary hearing held on the motion.

3. *Spousal Maintenance.* If a party seeks a temporary spousal maintenance order, that party shall state the specific duration and amounts requested and file an affidavit substantially similar to Form 2, Affidavit of Financial Information.

4. *Property, Debt, and Attorneys' Fees.* If a party seeks temporary orders to exclude a party from a residence, to divide community property, or to order payment of debt, expenses, or attorneys' fees, the motion shall set forth the specific relief requested, the proposed division of property, the income and assets that will be available to each party, and the responsibility each will have for payment of debt, expenses, and attorneys' fees if the order is granted. If a party seeks a temporary order for payment of attorneys' fees that party shall state the specific amount requested and file an affidavit substantially similar to Form 2, Affidavit of Financial Information.

**B. – N.** [No change in text.]

**Rule 67. Mediation, Arbitration, Settlement Conferences, and Other Dispute Resolution Processes Outside of Conciliation Court Services**

A. [No change in text.]

**B. Mediation.** Any issues in dispute may be subject to mediation. Mediation may be conducted by a private mediator agreed upon by the parties, a mediator assigned by the court from a roster of mediators maintained by the court, or a mediator participating in an ADR process overseen, administered, or approved by the court.

1. *Private Mediation; Roster of Mediator; Authority of Judges ProTempore Acting as Private Mediators.*

a. The parties may select a private mediator by agreement. The parties or counsel, if any, shall sign and file with the court a written notice that private mediation will take place, stating the name of the mediator and the date set for the initial mediation conference. The parties may request the court to choose an independent mediator from a list of mediators supplied by them or from a roster of mediators maintained by the court. The parties shall contract directly with the private mediator and be responsible for payment of the fees for such mediation. Unless the court orders or the parties agree otherwise, the cost of mediation shall be equally shared by the parties. The mediator may not conduct any subsequent family assessment or evaluation in the same case. Any binding agreement that is reached by the parties shall comply with Rule 69. As part of any agreement reached, the parties shall acknowledge that the agreement was entered into by them voluntarily and without threat or undue influence, after full disclosure of all relevant facts and information, that it is intended to be a binding agreement, and that it is fair and equitable, and, where there are minor children common to the parties, that it is in the best interests of the children.

b. Upon request of the parties, the court may appoint an active judge pro tempore in good standing to conduct a private mediation with the parties. Any such request shall be accompanied by an affidavit signed by the judge pro tempore swearing under oath that he or she is an active judge pro tempore in good standing appointed by the Supreme Court at the request of the Presiding Judge of the Superior Court of the County. The Order appointing the judge pro tempore to conduct such a private mediation may authorize him or her to approve binding agreements made by the parties in conformance with Rule 69, to make any findings necessary to approve the agreements of the parties pursuant to A.R.S. § 25-317, to make the jurisdictional findings pursuant to A.R.S. § 25-312 or A.R.S. § 25-313 and

to sign any Decree of Dissolution presented that conforms to the agreements reached by the parties. Any Decree of Dissolution signed by a judge pro tempore pursuant to such authority shall have the same force and effect as a Decree of Dissolution signed by a judge or commissioner of the court and the Decree shall be immediately delivered to the judge appointing the judge pro tempore for filing and entry into the minutes of the court. A judge pro tempore acting as a private mediator may be paid for his or her services as a private mediator, but shall not seek remuneration nor shall be paid anything of value by the parties for his or her service as a judge pro tempore for approving such agreements or for signing and entering a Decree of Dissolution.

2. – 9. [No change in text.]

C. – E. [No change in text.]

## **Rule 69. Binding Agreements; Presumption of Validity**

~~Agreements between the parties shall be binding if they are in writing or if the agreements are made or confirmed on the record before a judge, commissioner, judge pro tempore, court reporter, or other person authorized by local rule or Administrative Order to accept such agreements.~~

### **A. An Agreement between the parties shall be valid and binding if**

1. the agreement is in writing, or
2. the terms of the agreement are set forth on the record before a judge, commissioner, judge pro tempore, court reporter, or other person authorized by local rule or Administrative Order to accept such agreements, or
3. the terms of the agreement are set forth on any audio recording device before a mediator or settlement conference officer appointed by the court pursuant to Rule 67.

**B. Any agreement entered into by the parties under this rule shall be presumed to be valid and binding, and it shall be the burden of the party challenging the validity of the agreement to prove any defect in the agreement, except that nothing herein shall preclude the court from exercising its independent discretion pursuant to A.R.S. § 25-317. Pursuant to A.R.S. § 25-324, the court may award a party the cost and expenses of maintaining or defending a proceeding to challenge the validity of an agreement made in accordance with this rule.**

## **Rule 74. Parenting Coordinator.**

**A. – D. [No change in text.]**

**E. Powers and Scope of Appointment.** The court order appointing the Parenting Coordinator shall specify the scope of the appointment. The scope may include assisting with implementation of court orders, making recommendations to the court regarding implementation, clarification, modification, and enforcement of any temporary or permanent custody or parenting time order, and making recommendations on the day-to-day issues experienced by the parties. By way of example only, these issues include disagreements around exchanges, holiday scheduling, discipline, health issues, school and extracurricular activities, and managing problematic behaviors by the parents or child(ren). The Parenting Coordinator shall not have the authority to make a recommendation affecting child support, a change of custody, or a substantial change in parenting time. In the event the Parenting Coordinator determines parenting or family issues or circumstances exist that are significantly detrimental to the welfare of the child(ren) and that a change in custody or a substantial change in parenting time is warranted, the Parenting Coordinator may submit the Parenting Coordinator's concerns in writing to the parties and the court. Counsel are not permitted to attend parenting

coordinator meetings unless agreed to by the parties and the parenting coordinator, or ordered by Court.

F. – L. [No change in text.]

## **Rule 78. Judgments; Costs; Attorneys' Fees**

**A. Definition; Form.** "Judgment" as used in these rules includes a decree and an order from which an appeal lies. A judgment shall not contain a recital of pleadings or the record of prior proceedings, but may contain findings by a family law master appointed by the court.

**B. Judgment upon Multiple Claims or Involving Multiple Parties.** When more than one claim for relief is presented in an action, whether as a claim, counterclaim, or third-party claim, or when multiple parties are involved, the court may direct the entry of final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties. For purposes of this subsection, a claim for attorneys' fees may be considered a separate claim from the related judgment regarding the merits of a cause.

**C. Entry of Judgment after Death of Party.** Judgment may be entered after the death of a party upon a decision or upon an issue of fact rendered in the party's lifetime, except that an order dissolving the marriage may not be entered after the death of either party.

### **D. Attorneys' Fees, Costs, and Expenses.**

1. *Claims for Attorneys' Fees, Costs, and Expenses.* A claim for attorneys' fees, costs and expenses initially shall be made in the pleadings, pretrial statement, or by motion filed prior to trial or post-decree evidentiary hearing. Costs and expenses also shall be claimed by an itemized statement.

2. *Time of Determination.* Except as to temporary awards of attorneys' fees and costs, when attorneys' fees are claimed, the determination as to the claimed attorneys' fees shall be included with a decision on the merits of the case or as otherwise ordered by the court.

3. *Method of Establishing Claim.* A claim for attorneys' fees, costs, and expenses shall be supported by an itemized affidavit, exhibits, or, at the discretion of the court, by testimony. If the motion is contested, opposing parties may respond to the motion and a hearing may be granted in the discretion of the court. In addition, the court may refer issues relating to the value of services to a family law master under Rule 72.

4. *Scope.* The provisions of subdivisions (1) through (3) do not apply to claims for fees, costs, and expenses as sanctions pursuant to statute or rule, or to causes in which the substantive law governing the action provides for the recovery of such fees, costs, and expenses as an element of damages to be proved at trial.

**E. Offers of Judgment Not Applicable.** The procedure governing offers of judgment, authorized in civil actions under Ariz. R. Civ. Proc. 68, shall not apply in any legal matter subject to these Rules.

## **COMMITTEE COMMENT**

This rule is based on Rule 54, *Arizona Rules of Civil Procedure*.

## **COMMENT TO 2010 AMENDMENT**

Offers of Judgment pursuant to Ariz. R. Civ. P. 68 are not appropriate in family law cases, where monetary judgments or damages are often secondary to other issues in the case. This is especially true in the context of custody and parenting time, where concern for the best interests of children is paramount. Offers of Judgment also potentially conflict with A.R.S. § 25-324, which already provides a mechanism for assessing costs and attorney fees in family law cases, leaving any assessment to the sound discretion of the trial judge. A rule authorizing offers of judgment may also conflict with the court's independent duty under A.R.S. § 25-317 to nullify settlements it deems unfair.

## **APPENDIX “B”**



## **Arizona Rules of Family Law Procedure**

### **Add New Rule 5.1. Simultaneous Dependency and Custody Proceedings**

(A) When a pending family law proceeding and a pending dependency proceeding concern the same parties, any party may file a motion to consolidate the proceedings. The court may on its own motion consolidate the proceedings. The motion shall be filed in the juvenile division and a copy shall be provided to the assigned family law division. The assigned juvenile division shall rule on the motion to consolidate. Custody and parenting time issues will be litigated in the juvenile division unless the juvenile division defers jurisdiction to the assigned family law division.

(B) If the assigned juvenile division determines that a change of custody may result in a dismissal of an adjudicated dependency case, the assigned juvenile division may refer the dependency matter to the assigned family law division for change of custody proceedings or retain the cases in the juvenile division.

(C) If the juvenile division denies a motion to consolidate and defers jurisdiction of an adjudicated dependency matter to the assigned family law division in a change of custody proceeding, a hearing may be set pursuant to A.R.S. § 25-411(E). The referral to the assigned family law division shall include an order that the assigned family law division has jurisdiction to resolve the custody matter. If the change of custody is granted, the assigned family law division may enter an order dismissing the dependency.

(D) If the juvenile division finds that the matter is more appropriate for the family law division, the juvenile division may transfer the matter to the family law division.

(E) During any dependency/guardianship proceeding in the juvenile division, the assigned juvenile division may suspend, modify, or terminate a child support order for current support if the parent entitled to receive the child support no longer has legal or physical custody of the child, and, except in Title IV-D cases may make appropriate orders regarding any past due support or child support arrears. The assigned juvenile division may direct that the wage assignment be quashed or modified.

## **Rule 47. Temporary Orders**

**A. Motions for Pre-Decree or Pre-Judgment Temporary Orders.** A party seeking temporary orders under A.R.S. §§ 25-315, 25-324, 25-404, 25-408, 25-415, 25-817 or 25-905 shall do so by filing a separate verified motion with the court setting forth the legal and jurisdictional basis for the motion and the specific relief requested. The motion shall be filed after or concurrently with the initial petition, shall incorporate the relevant allegations of a filed petition by reference and not separately repeat them, and shall include the following information and documents, where relevant:

1. *Custody and Parenting Time.* If a party seeks a temporary custody, parenting time, or visitation order, the motion shall set forth a proposed parenting plan specifically stating the custody, parenting time, and visitation requested for all parties to the action.

2. *Child Support.* If a party seeks a temporary child support order, the party shall include and file with the motion a completed a Child Support Worksheet setting forth the amount requested in accordance with the current *Arizona Child Support Guidelines*. The movant shall also provide copies of all child support disclosure documents required by Rule 49(B) to the opposing party within the time period specified in paragraph E, and shall provide an additional copy of these documents to the court at the time of any evidentiary hearing held on the motion.

3. *Spousal Maintenance.* If a party seeks a temporary spousal maintenance order, that party shall state the specific duration and amounts requested and file an affidavit substantially similar to Form 2, Affidavit of Financial Information.

4. *Property, Debt, and Attorneys' Fees.* If a party seeks temporary orders to exclude a party from a residence, to divide community property, or to order payment of debt, expenses, or attorneys' fees, the motion shall set forth the specific relief requested, the proposed division of property, the income and assets that will be available to each party, and the responsibility each will have for payment of debt, expenses, and attorneys' fees if the order is granted. If a party seeks a temporary order for payment of attorneys' fees that party shall state the specific amount requested and file an affidavit substantially similar to Form 2, Affidavit of Financial Information.

**B. – N.** [No change in text.]

**Rule 67. Mediation, Arbitration, Settlement Conferences, and Other Dispute Resolution Processes Outside of Conciliation Court Services**

A. [No change in text.]

**B. Mediation.** Any issues in dispute may be subject to mediation. Mediation may be conducted by a private mediator agreed upon by the parties, a mediator assigned by the court from a roster of mediators maintained by the court, or a mediator participating in an ADR process overseen, administered, or approved by the court.

1. *Private Mediation; Roster of Mediator; Authority of Judges ProTempore Acting as Private Mediators.*

- a. The parties may select a private mediator by agreement. The parties or counsel, if any, shall sign and file with the court a written notice that private mediation will take place, stating the name of the mediator and the date set for the initial mediation conference. The parties may request the court to choose an independent mediator from a list of mediators supplied by them or from a roster of mediators maintained by the court. The parties shall contract directly with the private mediator and be responsible for payment of the fees for such mediation. Unless the court orders or the parties agree otherwise, the cost of mediation shall be equally shared by the parties. The mediator may not conduct any subsequent family assessment or evaluation in the same case. Any binding agreement that is reached by the parties shall comply with Rule 69. As part of any agreement reached, the parties shall acknowledge that the agreement was entered into by them voluntarily and without threat or undue influence, after full disclosure of all relevant facts and information, that it is intended to be a binding agreement, and that it is fair and equitable, and, where there are minor children common to the parties, that it is in the best interests of the children.
- b. Upon request of the parties, the court may appoint an active judge pro tempore in good standing to conduct a private mediation with the parties. Any such request shall be accompanied by an affidavit signed by the judge pro tempore swearing under oath that he or she is an active judge pro tempore in good standing appointed by the Supreme Court at the request of the Presiding Judge of the Superior Court of the County. The Order appointing the judge pro tempore to conduct such a private mediation may authorize him or her to approve binding agreements made by the parties in conformance with Rule 69, to make any findings necessary to approve the agreements of the parties pursuant to A.R.S. § 25-317, to make the jurisdictional findings pursuant to A.R.S. § 25-312 or A.R.S. § 25-313 and

to sign any Decree of Dissolution presented that conforms to the agreements reached by the parties. Any Decree of Dissolution signed by a judge pro tempore pursuant to such authority shall have the same force and effect as a Decree of Dissolution signed by a judge or commissioner of the court and the Decree shall be immediately delivered to the judge appointing the judge pro tempore for filing and entry into the minutes of the court. A judge pro tempore acting as a private mediator may be paid for his or her services as a private mediator, but shall not seek remuneration nor shall be paid anything of value by the parties for his or her service as a judge pro tempore for approving such agreements or for signing and entering a Decree of Dissolution.

2.– 9. [No change in text.]

C. – E. [No change in text.]

## **Rule 69. Binding Agreements; Presumption of Validity**

- A.** An Agreement between the parties shall be valid and binding if
1. the agreement is in writing, or
  2. the terms of the agreement are set forth on the record before a judge, commissioner, judge pro tempore, court reporter, or other person authorized by local rule or Administrative Order to accept such agreements, or
  3. the terms of the agreement are set forth on any audio recording device before a mediator or settlement conference officer appointed by the court pursuant to Rule 67.
- B.** Any agreement entered into by the parties under this rule shall be presumed to be valid and binding, and it shall be the burden of the party challenging the validity of the agreement to prove any defect in the agreement, except that nothing herein shall preclude the court from exercising its independent discretion pursuant to A.R.S. § 25-317. Pursuant to A.R.S. § 25-324, the court may award a party the cost and expenses of maintaining or defending a proceeding to challenge the validity of an agreement made in accordance with this rule.

## **Rule 74. Parenting Coordinator.**

**A. – D.** [No change in text.]

**E. Powers and Scope of Appointment.** The court order appointing the Parenting Coordinator shall specify the scope of the appointment. The scope may include assisting with implementation of court orders, making recommendations to the court regarding implementation, clarification, modification, and enforcement of any temporary or permanent custody or parenting time order, and making recommendations on the day-to-day issues experienced by the parties. By way of example only, these issues include disagreements around exchanges, holiday scheduling, discipline, health issues, school and extracurricular activities, and managing problematic behaviors by the parents or child(ren). The Parenting Coordinator shall not have the authority to make a recommendation affecting child support, a change of custody, or a substantial change in parenting time. In the event the Parenting Coordinator determines parenting or family issues or circumstances exist that are significantly detrimental to the welfare of the child(ren) and that a change in custody or a substantial change in parenting time is warranted, the Parenting Coordinator may submit the Parenting Coordinator's concerns in writing to the parties and the court. Counsel are not permitted to attend parenting coordinator meetings unless agreed to by the parties and the parenting coordinator, or ordered by Court.

**F. – L.** [No change in text.]

## **Rule 78. Judgments; Costs; Attorneys' Fees**

**A. Definition; Form.** "Judgment" as used in these rules includes a decree and an order from which an appeal lies. A judgment shall not contain a recital of pleadings or the record of prior proceedings, but may contain findings by a family law master appointed by the court.

**B. Judgment upon Multiple Claims or Involving Multiple Parties.** When more than one claim for relief is presented in an action, whether as a claim, counterclaim, or third-party claim, or when multiple parties are involved, the court may direct the entry of final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties. For purposes of this subsection, a claim for attorneys' fees may be considered a separate claim from the related judgment regarding the merits of a cause.

**C. Entry of Judgment after Death of Party.** Judgment may be entered after the death of a party upon a decision or upon an issue of fact rendered in the party's lifetime, except that an order dissolving the marriage may not be entered after the death of either party.

### **D. Attorneys' Fees, Costs, and Expenses.**

1. *Claims for Attorneys' Fees, Costs, and Expenses.* A claim for attorneys' fees, costs and expenses initially shall be made in the pleadings, pretrial statement, or by motion filed prior to trial or post-decree evidentiary hearing. Costs and expenses also shall be claimed by an itemized statement.

2. *Time of Determination.* Except as to temporary awards of attorneys' fees and costs, when attorneys' fees are claimed, the determination as to the claimed attorneys' fees shall be included with a decision on the merits of the case or as otherwise ordered by the court.

3. *Method of Establishing Claim.* A claim for attorneys' fees, costs, and expenses shall be supported by an itemized affidavit, exhibits, or, at the discretion of the court, by testimony. If the motion is contested, opposing parties may respond to the motion and a hearing may be granted in the discretion of the court. In addition, the court may refer issues relating to the value of services to a family law master under Rule 72.

4. *Scope.* The provisions of subdivisions (1) through (3) do not apply to claims for fees, costs, and expenses as sanctions pursuant to statute or rule, or to causes in which the substantive law governing the action provides for the recovery of such fees, costs, and expenses as an element of damages to be proved at trial.

**E. Offers of Judgment Not Applicable.** The procedure governing offers of judgment, authorized in civil actions under Ariz. R. Civ. Proc. 68, shall not apply in any legal matter subject to these Rules.

## **COMMITTEE COMMENT**

This rule is based on Rule 54, *Arizona Rules of Civil Procedure*.

## **COMMENT TO 2010 AMENDMENT**

Offers of Judgment pursuant to Ariz. R. Civ. P. 68 are not appropriate in family law cases, where monetary judgments or damages are often secondary to other issues in the case. This is especially true in the context of custody and parenting time, where concern for the best interests of children is paramount. Offers of Judgment also potentially conflict with A.R.S. § 25-324, which already provides a mechanism for assessing costs and attorney fees in family law cases, leaving any assessment to the sound discretion of the trial judge. A rule authorizing offers of judgment may also conflict with the court's independent duty under A.R.S. § 25-317 to nullify settlements it deems unfair.